Testimony of Kimberly McCullough, Legislative Director
In Support of HB 2647 with the -1, -2 and -3 amendments
House Committee on Judiciary
March 16, 2015

Chair Barker and Members of the Committee:

Thank you for the opportunity to submit comments in support of HB 2647 with the -1, -2 and -3 amendments.

As technology develops and increasing amounts of information about our lives and identities are captured and stored digitally, it is particularly important that we adopt clear rules governing the use of our digital estates. A digital estate may include a wide range of online content: bank accounts, photo albums, email accounts, text messages, voicemail, social media profiles, health and fitness data, and intimate or otherwise sensitive and highly personal communications. Some of this content is confidential (e.g., a bank account); some of this content is private (e.g., emails to your loved ones, a religious leader, or an addiction program sponsor).

Carl Szabo will provide more detailed information about the bill, but we support HB 2647 with the -1, -2 and -3 amendments because:

- It recognizes that digital assets are not analogous to physical records and should be treated differently under the law.

- As the Supreme Court has noted, the Internet is "as diverse as human thought" and can reveal an incredible amount of information about a person's life. Consumers do not consider all of their stored content to be equally sensitive. Instead, they deliberately share some information with the public and other information with curated lists of friends or only one other person. Beyond that, some information is kept completely private on password-protected accounts, so that no one except the individual can see it. Because of these variations of privacy concerns, consumers should be able to exercise choices that are tailored to their individual preferences.

- Content such as correspondence and photographs are generally indefinitely preserved by default in the digital world. In addition, there is little incentive for users to delete or edit their digital assets due to the fact that they now have access to practically unlimited storage space. This means that individuals leave behind a vast amount of digital information when they pass away.

- Consumers do not expect other people or entities to gain access to their accounts. Our law should honor that expectation after a person passes away, allowing them choice and control.

This bill, as modified by the -1, -2 and -3 amendments, contains a number of essential safeguards:

- It gives users the autonomy to control who can access the contents of their accounts after their death, either through account controls or an estate plan.

- Privacy is the default. This is a key provision, because no law should default to provide access to all digital content.

- The bill requires certainty that the records that are disclosed are indeed those of the deceased, not another person with the same name or a similar email address.

- It protects the privacy of third parties by only disclosing records of accounts (metadata or "envelope data"), rather than content. This is particularly important because third parties also have a privacy interest in their prior communications with a deceased individual. In addition, content referring to third parties may reveal highly sensitive information about those third parties.

- The bill is limited in scope to deal with the digital assets of the deceased, rather than also including living people who are involved in conservatorship proceedings. Conservators are typically appointed to assist a protected person with financial and healthcare decisions. While this may warrant access to the protected person's financial or medical accounts, it does not automatically follow that the conservator should have access to all of the individual's other online accounts. For that reason, conservatorships don't belong in this bill.

For all of these reasons, we urge you to support HB 2647 with the -1, -2 and -3 amendments. Please feel free to contact me with any questions or concerns.